

## Message Text

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ORIGIN IO-13

INFO OCT-01 ISO-00 AF-08 ARA-06 EA-07 EUR-12 NEA-10 SCS-03

DHA-02 CIAE-00 DODE-00 PM-04 H-02 INR-07 L-03 NSAE-00

NSC-05 PA-01 PRS-01 SP-02 SS-15 USIA-06 SIG-01 /109 R

DRAFTED BY IO/HR:FJCRAWFORD:BKM

APPROVED BY IO:JABAKER

L/AF:MMATHESON

L/UNA:RSTOWE

AF/S:FWISNER

SCS:AAGISE

D/HA:RPALMER

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R 102104Z AUG 76

FM SECSTATE WASHDC

TO ALL DIPLOMATIC POSTS

XMT AMEMBASSY BEIRUT

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E.O. 11652: N/A

TAGS: PFOR, UN, SHUM

SUBJECT: ENTRY INTO FORCE OF THE INTERNATIONAL CONVENTION  
ON THE SUPPRESSION AND PUNISHMENT OF THE CRIME OF  
APARTHEID

REF: (A) USUN 2922 (NOTAL), (B) STATE 137374 (NOTAL)

1. THE INTERNATIONAL CONVENTION ON THE SUPPRESSION AND  
PUNISHMENT OF THE CRIME OF APARTHEID, ADOPTED BY THE UN  
GENERAL ASSEMBLY AS AN ANNEX TO RESOLUTION 3068 (XXVIII)  
ON NOVEMBER 30, 1973, ENTERED INTO FORCE JULY 18, 1976.  
THE STATES THAT HAVE DEPOSITED INSTRUMENTS OF RATIFICATION  
ARE, IN ORDER OF DEPOSIT: HUNGARY, BULGARIA, GDR, CHAD,  
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BENIN, SOMALIA, GUINEA, QATAR, ECUADOR, YUGOSLAVIA, IRAQ,

MONGOLIA, UAE, UKRAINE, USSR, BYELORUSSIA, POLAND,  
CZECHOSLOVAKIA, TANZANIA AND SYRIA.

2. THE U.S. DID NOT RPT NOT SUPPORT THE CONVENTION IN  
THE GENERAL ASSEMBLY AND HAS NOT SIGNED IT.

3. THE PURPOSE OF THIS MESSAGE IS: (1) TO ALERT ALL  
POSTS TO THE ENTRY INTO FORCE OF THE APARTHEID CONVENTION;  
(2) TO DESCRIBE THE SERIOUS POLITICAL AND LEGAL OBJECTIONS  
THAT THE UNITED STATES HAS TO THE CONVENTION, PARTICULARLY

TO ARTICLES II, III AND V; AND (3) TO REQUEST POSTS IN  
STATES THAT HAVE RATIFIED OR MAY RATIFY THE CONVENTION TO  
BE ALERT TO POSSIBLE ADVERSE CONSEQUENCES FOR AMERICAN  
CITIZENS

4. THE PRINCIPAL OBJECTION OF THE U.S. IS TO THE VAGUE  
AND OVER-BROAD DEFINITION OF "THE CRIME OF APARTHEID"  
CONTAINED IN ARTICLE II OF THE CONVENTION. ARTICLE II  
STATES THAT THE CRIME OF APARTHEID SHALL APPLY TO THE  
FOLLOWING ACTS:

(A) DENIAL TO A MEMBER OR MEMBERS OF A RACIAL GROUP  
THE RIGHT TO LIFE AND LIBERTY OF PERSON;

(B) DELIBERATE IMPOSITION ON A RACIAL GROUP OF LIVING  
CONDITIONS CALCULATED TO CAUSE ITS PHYSICAL DESTRUCTION;

(C) LEGISLATIVE AND OTHER MEASURES CALCULATED TO PREVENT  
A RACIAL GROUP OR GROUPS FROM PARTICIPATION IN THE  
POLITICAL, SOCIAL, ECONOMIC, AND CULTURAL LIFE OF THE  
COUNTRY;

(D) LEGISLATIVE AND OTHER MEASURES DESIGNED TO DIVIDE  
THE POPULATION ALONG RACIAL LINES;

(E) EXPLOITATION OF LABOR OF MEMBERS OF RACIAL GROUPS;

(F) PERSECUTION OF ORGANIZATIONS AND PERSONS OPPOSING  
APARTHEID.

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REGARDLESS OF THE QUESTION OF THE ILLEGALITY OF THE  
SPECIFIC ACTS ENUMERATED, WHEN COMMITTED BY GOVERNMENTS,  
THE CONVENTION IN ARTICLE III APPEARS TO EXTEND INTERNA-  
TIONAL CRIMINAL RESPONSIBILITY TO THE PRIVATE ACTS OF  
INDIVIDUALS WHEREVER COMMITTED, INCLUDING WHAT MAY BE  
MERE ADVOCACY OF OR ACQUIESCENCE IN APARTHEID POLICIES.  
THUS UNDER THE CONVENTION STATES PARTIES WOULD BE OBLIGED

TO TAKE ACTION AGAINST INDIVIDUALS FOR SUCH ADVOCACY OR ACQUIESCENCE. AS FOR THE UNITED STATES, THIS COULD INVOLVE INFRINGEMENT OF FREE SPEECH RIGHTS GUARANTEED BY THE FIRST AMENDMENT. IN ADDITION, THE SCOPE OF THE PROSCRIBED ACTS IS SO BROADLY AND VAGUELY DEFINED IN SOME INSTANCES THAT IT IS NOT AT ALL CLEAR WHAT THE PRECISE BOUNDARIES OF LEGALITY ARE.

5. ARTICLE V EXTENDS JURISDICTION OVER PERSONS CHARGED WITH ACTS ENUMERATED IN ARTICLE II TO ANY STATE PARTY TO THE CONVENTION, REGARDLESS OF WHETHER THE ACT WAS COMMITTED IN THAT STATE OR THE PERSON CHARGED HAS ANY RELATION WITH

THAT STATE. THIS BROAD EXTENSION OF INTERNATIONAL JURISDICTION, EVEN IN CASES WHERE THERE ARE NO SIGNIFICANT CONTACTS BETWEEN ALLEGED OFFENDER AND THE STATE WHICH CLAIMS JURISDICTION AND WHERE THE OFFENDER IS NOT A NATIONAL OF THAT STATE, IS NOT, IN THE VIEW OF THE U.S., CONSISTENT WITH THE BASIC NORMS OF FAIRNESS AND DUE PROCESS ESSENTIAL IN CRIMINAL LAW.

6. AS A PRACTICAL MATTER IT IS CONCEIVABLE THAT A PERSON HAVING SOME COMMERCIAL OR OTHER CONNECTION WITH SOUTH AFRICA OR NAMIBIA COULD BE DETAINED, ACCUSED, AND TRIED IN ANY STATE PARTY TO THE CONVENTION FOR ACTS DEFINED IN ARTICLE II.

7. POSTS IN THOSE STATES THAT HAVE RATIFIED OR MAY RATIFY THIS CONVENTION SHOULD BE ALERT TO ANY IMPLEMENTING LEGISLATION OR GOVERNMENTAL ADMINISTRATIVE ACTIONS TAKEN TO ENFORCE THE CONVENTION AND SHOULD REPORT IMMEDIATELY ON THEM, INCLUDING THEIR POSSIBLE IMPACT ON U.S. CITIZENS.

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8. FOR FEAR OF STIMULATING ACTION WHERE NONE IS ENVISAGED, POSTS SHOULD AVOID QUERYING FOREIGN OFFICIALS ABOUT PLANS FOR IMPLEMENTATION. LIKEWISE, WE WISH TO REFRAIN FROM PREMATURE WARNINGS TO AMERICAN CITIZENS UNTIL POSTS RECEIVE INDICATIONS THAT AMERICANS MIGHT BE IN JEOPARDY.

9. FOR USUN: IN LIGHT OF EARLIER BRITISH INQUIRY (REF B), YOU SHOULD INFORM UKUN OF SUBSTANCE OF THIS MESSAGE.

10. REPLY SINGLY, INFO USUN. ROBINSON

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## Message Attributes

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**Disposition Approved on Date:**  
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